

**JOINT EXERCISE OF POWERS AGREEMENT**  
creating the  
**CHINO BASIN DESALTER AUTHORITY**  
("CDA")

This Joint Exercise of Powers Agreement ("Agreement") is made and entered into as of the 25<sup>th</sup> day of Sept., 2001, by and among the Jurupa Community Services District ("JCSD"), the Santa Ana River Water Company ("SARWC"), the cities of Chino, Chino Hills, Norco and Ontario and the Inland Empire Utilities Agency ("IEUA") (collectively the "Parties" and individually, a "Party").

**RECITALS**

- A. The Parties to this Agreement all have an interest in the successful management of groundwater resources in the Chino Basin.
- B. The Parties are subject to the Judgment entered in Chino Basin Municipal Water District v. City of Chino (San Bernardino Case No. RCV 51010) that called for the development of an Optimum Basin Management Program ("OBMP").
- C. With the exception of the Santa Ana River Water Company, the Parties all executed the Peace Agreement on or before August 1, 2000 to facilitate and enable the implementation of the OBMP. The Santa Ana River Water Company, while not a party to the Peace Agreement, did approve of the Peace Agreement through minute order of its governing board.
- D. Article VII of the Peace Agreement set forth various terms and conditions for the construction and operation of Chino Basin desalters and a general template for the purchase and sale of desalted water.
- E. The Parties, "Purchasers" in that fully executed document entitled "Integrated Chino-Arlington Desalters System Term Sheet" ("Term Sheet") attached hereto and incorporated herein as Exhibit "A," elected to discharge their respective rights and obligations under Article VII of the Peace Agreement in accordance with the terms and conditions set forth in such Term Sheet.
- F. The Parties acknowledge that this Agreement to form a Joint Powers Authority is in fulfillment of the Purchasers' collective obligation to form a Joint Enterprise Group ("JEG") in accordance with Section 2(b)(vi) of the Term Sheet.

- G. The Parties have the power and authorization to design, finance, lease, purchase, acquire, construct, operate, maintain, sell, hypothecate or otherwise dispose of the Facilities for the purpose of the production, treatment and distribution of water to the Purchasers as provided in the Term Sheet, and for the improvement of the degraded water quality of the Chino Basin.
- H. These powers can be exercised best through the cooperative action of the Parties through a joint exercise of powers authority.
- I. Each of the Parties is authorized to contract with each other for the joint exercise of these common powers under Article I, Chapter 5, Division 7, Title I commencing with Section 6500 of the Government Code of the State of California.
- J. SARWC is a mutual water company authorized to enter into this Agreement by Section 6525 of Article I, Chapter 5, Division 7, Title I of the Government Code of the State of California.

## COVENANTS

The Parties agree as follows:

### I.

## DEFINITIONS

- 1.1 For the purpose of this Agreement, the following words shall have the following meanings:
- (a) "Agreement" means this joint exercise of powers agreement.
  - (b) "Chino Basin Desalter Authority" or "CDA" means the joint exercise of powers authority created by this Agreement and referred to in the Term Sheet as the Joint Enterprise Group or JEG.
  - (c) "Facilities" means those facilities described in section 7.1 herein.
  - (d) "Fiscal Year" means July 1 through June 30 or such other period as the Board of Directors shall determine.



- (e) "Member" means each of the Parties that become a signatory to this Agreement.
- (f) "Original Members" means JCSD, the SAWRC, the cities of Chino, Chino Hills, Norco and Ontario, and, the ex-officio Member, the Inland Empire Utilities Agency.
- (g) "Purchasers" means purchasers under the Term Sheet.
- (h) "Term Sheet" means the Integrated Chino-Arlington Desalters System Term Sheet previously executed by all of the Original Members, and effective as of July 1, 2001.

## 1.2 Rules of Construction

- (a) Unless the context clearly requires otherwise:
  - (i) The plural and singular forms include the other;
  - (ii) "Shall," "will," "must," and "agrees" are each mandatory;
  - (iii) "may" is permissive;
  - (iv) "or" is not exclusive;
  - (v) "includes" and "including" are not limiting; and
  - (vi) "between" includes the ends of the identified range.
- (b) The masculine gender shall include the feminine and neuter genders and vice versa.
- (c) Reference to any agreement, document, instrument, or report means such agreement, document, instrument or report as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof.
- (d) Except as specifically provided herein, reference to any law, statute, ordinance, regulation or the like means such law as amended, modified, codified or reenacted, in whole or in part and in effect from time to time, including any rules and regulations promulgated thereunder.
- (e) This Agreement shall be construed consistent with the Term Sheet. In the event of conflict between this Agreement and the Term Sheet, the Term Sheet shall control.

## II.

### ORGANIZATION

- 2.1 CDA Created. There hereby is created a public entity separate from its Members, to be known as the "Chino Basin Desalter Authority" ("CDA"). The CDA is formed by this Agreement pursuant to the provisions of Article I, Chapter 5, Division 7, Title 1 commencing with Section 6500, of the Government Code of the State of California.

- 2.2 **Membership.** The Members of the CDA shall be the original Parties to this Agreement, including IEUA as an ex-officio Member, and such other entities which execute an Amendment to this Agreement and each Amendment thereto, and which have not withdrawn from the CDA pursuant to the provisions of Article IX hereof. Notwithstanding any other provision of this Agreement SARWC shall have an independent unilateral right to withdraw from this Agreement without incurring any liability of the Members, Parties, or CDA. SARWC must exercise this right by written notice delivered to all other Members no later than thirty (30) days after execution by all necessary parties of the last of the following agreements: (i) an agreement with SAWPA in accordance with Section 2(b)(i) of the Term Sheet; (ii) all transportation agreements as referenced in Section 12.1(a) of this Agreement; (iii) all operations and management agreements as referenced in Section 12.1(b) of this Agreement; and (iv) all water purchase agreements between the CDA and each of its voting Members. Upon exercise of this option to withdraw, SARWC shall purchase water from the CDA in the amount specified by Section 5.1(b) hereof, and in accordance with the Term Sheet, without being a Member of the CDA. The voting rights of the remaining Members shall be adjusted accordingly. If SARWC does not exercise this right, then it may withdraw from the CDA only in accordance with Section 9.1 hereof.
- 2.3 **Names.** The names, particular capacities, and addresses of the Members shall be as set forth in this Agreement and in any Amendment hereof.
- 2.4 **Board of Directors.** The CDA shall be governed by a Board of Directors ("Board") comprised of one representative from each Member of the CDA. The representative of IEUA, however, shall serve as the representative of an ex-officio Member only.
- 2.5 **Selection of Directors.** Within thirty (30) days after the execution of this Agreement by all of the Original Members, each Member shall designate and appoint, by resolution of its governing body, a representative to serve as a Director on the Board. Each Member also shall appoint an alternate Director to serve in the absence of the regular Director, to assume all rights and duties of the absent Director. At least one of either the Director or the alternate Director shall have technical expertise relevant to the operations and maintenance of the desalter facilities as determined by each Member. Each Member shall give written notice to the CDA of the names of its Director and alternate Director. Each Director and alternate Director shall hold office from the first meeting of the Board after the appointment of the Director or alternate Director until a successor is selected and qualified. Directors and alternate Directors shall serve at the pleasure of the governing body of their appointing Members and may be removed at any time, with or without cause, at the sole discretion of such governing body.
- 2.6 **Stipend.** The CDA shall pay a stipend to the Members of the Board, including its ex-officio Member, in the amount of \$150.00 per meeting for a maximum of four meetings per year. In addition, a Director or alternate Director shall be reimbursed for reasonable expenses incurred in the conduct of the business of the CDA.



- 2.7 **Voting.** Unless otherwise provided herein, each Member, other than its ex-officio Member, shall be entitled to vote. A voting Member's vote shall be weighted according to the relative proportion that each Member's then existing firm commitment to purchase water bears to the total quantity of water then available for purchase from the CDA by all of its Members. The initial weighting of votes shall be as provided in Exhibit "A-3" to the Term Sheet and as more fully set forth immediately below. However, IEUA, as an ex-officio Member, shall be entitled to full access to all information provided to the Board, and entitled to full participation in deliberation of matters before the Board, but shall not be entitled to vote.

	<u>Entity</u>	<u>Acre-Feet</u>	<u>Weighted Vote</u>
a.	JCSD	8,200 afy	33.33%
b.	Chino	5,000 afy	20.33%
c.	Ontario	5,000 afy	20.33%
d.	Chino Hills	4,200 afy	17.07%
e.	SARWC	1,200 afy	4.88%
f.	Norco	<u>1,000 afy</u>	<u>4.07%</u>
	<i>Totals:</i>	<i>24,600 afy</i>	<i>100%</i>

- 2.8 **Principal Office.** The principal office of the CDA shall be established by resolution of the Board.
- 2.9 **Meetings.** The Board shall meet at the CDA principal office or such other place designated by the Board. The time and place of regular meetings of the Board shall be determined by resolution adopted by the Board, with a copy of such resolution furnished to each Member. Regular meetings of the Board shall occur once every quarter, and the first meeting of the fiscal year shall occur within thirty (30) days of the beginning of the fiscal year. In addition to its four regular meetings, the Board may hold special meetings upon the written request of at least two-thirds (2/3) of the voting power of the Board. All meetings of the Board shall be adjourned, sine die or to a time and place certain, by a majority vote of the voting power present at the meeting.
- 2.10 **Quorum.** For the purposes of transacting the business of the Board, a quorum shall consist of two-thirds (2/3) of the voting power of the Board.

- 2.11 Officers. There shall be selected from the membership of the Board, a Chairperson and a Vice-Chairperson. The Board shall also appoint a Secretary who may be a Director. The Treasurer shall be the Treasurer of IEUA who shall serve in the combined office of Treasurer and Auditor.
- (a) Treasurer. The Treasurer shall be the depository and have custody of all money of the CDA from whatever source, and shall draw all warrants and pay demands against the CDA as approved by the Board. The Treasurer shall function as the combined offices of Treasurer and Auditor pursuant to Government Code § 6505.6.
  - (b) Additional Officers. The Board shall have the power to appoint such additional officers as it deems necessary.
  - (c) Terms. The Chairperson, Vice-Chairperson, and Secretary shall hold office for a period of one year commencing January 1<sup>st</sup> of each fiscal year, provided, however, the first Chairperson, Vice-Chairperson and Secretary appointed shall hold office from the date of appointment to December 31<sup>st</sup> of the ensuing fiscal year.
  - (d) Qualifications. Any officer, employee or agent of the Board also may be an officer, employee or agent of any of the Members. The public officer or officers or persons who have charge of, handle, or have any access to any money or property of the CDA shall be bonded, and the amount of their bond shall be designated and fixed in the budget for each fiscal year pursuant to Government Code § 6505.1. The Treasurer may be changed only by a two-thirds (2/3) vote of the Members, and only then if IEUA is not acting as a financial representative of the CDA for securing loans, grants, commercial paper or other funding for the benefit of the CDA.
  - (e) Privileges, Liability and Immunity. All of the privileges and immunities from liability, exemption from laws, ordinances and rules, all pension, relief, disability, workmen's compensation and other benefits which apply to the activities of officers, agents, or employees of any of the Members when performing their respective functions shall apply to the same degree and extent while such individuals are engaged in the performance of any of the functions and other duties under this Agreement. None of the officers, agents, or employees appointed by the Board shall be deemed by reason of their employment by the Board to be employed by any of the Members or subject to any of the requirements of such Members.
- 2.12 Staff. CDA shall have no full time staff. The Member who appoints the Director who serves as the Chairperson of the Board shall provide administrative staff support as needed by the CDA. The cost of this administrative staff time shall be borne by the Member who appoints the Director who serves as Chairperson.



- 2.13 **Minutes.** The Secretary of the Board shall cause minutes of all meetings of the Board to be kept, and shall cause a copy of such minutes to be forwarded to each Director and alternate Director.
- 2.14 **Rules.** The Board may adopt from time to time such rules and regulations for the conduct of its affairs as it may deem necessary.

### III.

#### PURPOSE AND POWERS

- 3.1 **Purpose.** Each Member has in common the power to study, plan, develop, finance, acquire, lease, design, construct, maintain, repair, manage, operate, control and dispose of the Facilities, either alone or in cooperation with other public or private entities, as provided in the Term Sheet and to purchase water from facilities owned and operated by other entities. The purpose of this Agreement is to jointly exercise some or all of the foregoing common powers, as appropriate, and for the exercise of such additional powers as may be authorized by law in the manner herein set forth, in order to effectuate the purposes of the Term Sheet. Nothing contained in this Agreement shall obligate any Member to participate in projects other than with regard to the Facilities that may be undertaken by any other Member.
- 3.2 **Powers and Responsibilities.** All of the power and authority of the CDA shall be exercised by the Board. On an annual basis, at its first meeting of each fiscal year, the Board shall:
- (a) Adopt an Operating Plan for the Facilities and direct IEUA and JCSD to implement that plan in accordance with the terms and conditions of the contracts between CDA and IEUA and JCSD for operation and maintenance of the Facilities, entered into pursuant to Section 3.3 hereof;
  - (b) Adopt a Capital Facilities Plan that generally will describe the operations of the Facilities and any alterations to the Facilities, including construction, lease, purchase acquisition, or divestiture of capital improvements in a manner consistent with the Term Sheet and this Agreement;
  - (c) Adopt a budget for the CDA for the ensuing fiscal year;
  - (d) Set the rate at which CDA will sell water; and
  - (e) Ensure that the Facilities are operated in such a manner that the minimum quantity and quality requirements for desalted water specified in the Term Sheet are satisfied.

- 3.3 **Operations.** Operations and management of the Facilities will be provided by IEUA and JCSD under contracts with the CDA, execution of both of which shall be an express condition subsequent to this Agreement as provided in Section 12.1(b) hereof. Under such operation and management contracts, IEUA shall be responsible for operation and management of the Chino I Desalter and Chino I Expansion, and JCSD shall be responsible for operation and management of the Chino II Desalter. IEUA and JCSD shall report to the Board as provided in the contracts, and as is otherwise prudent under the circumstances. However, in the event of termination, breach or other failure of performance of such contracts, CDA, in its sole discretion may secure substitute operation and management service on terms and conditions acceptable to the Board.
- 3.4 **ICADS Term Sheet.** The CDA shall have the power generally to exercise all rights and obligations of the JEG described in the Term Sheet.
- 3.5 **Manner of Exercising Powers.** In exercising the foregoing powers, the CDA is subject to the restrictions upon the manner of exercising the powers of the City of Ontario.
- 3.6 **Consultants.** The Board shall have the authority and discretion to hire consultants determined by it to be needed by the CDA. If the Board determines that the CDA needs legal counsel, it shall hire legal counsel that does not represent any Member, or the Chino Basin Watermaster, or any other entity that purchases water from the CDA, unless all Members waive conflicts and consent to representation by such counsel.

#### IV.

#### FINANCING

- 4.1 **Recovery of Costs.** The CDA shall recover all of its costs, including but not limited to capital, operation, maintenance and administrative expenses of any kind, through contracts for the delivery of minimum quantities of desalted water to the Members and through the contracts for sale of water to others as provided in the Term Sheet.
- 4.2 **Purchase of Water.** Each of the Parties to this Agreement agrees to execute contracts to purchase the quantities of desalted water from the CDA as provided in Sections 5.1(a) and (b) hereof.



- 4.3 **Price of Desalted Water.** The price of desalted water delivered from the Facilities shall be a uniform per acre-foot amount for all Purchasers, and shall be set to recover all fixed and variable costs incurred by the CDA. However, there shall be no separate or additional costs for wheeling or transportation of water made available by CDA to each Purchaser's designated point of delivery. The price of desalted water to entities which are not Purchasers and which have not become Members of the CDA shall be determined in the sole discretion of the Board.
- 4.4 **Excess Revenue.** Any excess revenue collected from the sale of water by the CDA shall be applied to reduce the cost of water in the following year on a pro-rated basis according to the then existing relative quantity commitments to purchase water from the CDA. In the alternative, a Purchaser may elect to receive its share of excess revenue in the form of an immediate rebate. Proceeds from the divestment of Facilities shall not be considered in the calculation of excess revenue.
- 4.5 **Revenue Deficit.** If insufficient revenue is collected from the sale of water by the CDA to satisfy all costs of the CDA described in Section 4.3 hereof, then such deficiency will be assessed by the CDA against all Purchasers on a pro-rated basis according to the relative quantity commitments to purchase water from the CDA for the preceding fiscal year in which such deficit was incurred. The CDA also may set the price of water sold to entities which are not Purchasers and which have not become Members of the CDA at a level which will ameliorate revenue deficiencies.
- 4.6 **Budget Reserves.** The Board shall determine on an annual basis, prior to the beginning of the fiscal year, a level of reasonable cash reserves to be accumulated by the CDA. This reserve shall be accumulated from revenues collected in excess of all actual costs of the CDA. Once the targeted reserve level is reached, all additional revenues collected in excess of the actual costs of the CDA shall be considered excess revenue, and dispersed according to Section 4.4 above.

## V.

### QUANTITY AND QUALITY

#### 5.1 **Quantities of Water.**

- (a) **Minimum Quantity.** CDA shall produce a minimum of 24,600 acre-feet of desalted water per year.

- (b) Minimum Quantity Commitments. The Members shall purchase the minimum quantity of desalted water provided in the Term Sheet and as set forth below during each fiscal year, at the price provided by Section 4.3 hereof, without regard to whether they actually take delivery of such water.

(1)	JCSD:	8,200 acre-feet per year ("afy")
(2)	Ontario:	5,000 afy
(3)	Chino:	5,000 afy
(4)	Chino Hills:	4,200 afy
(5)	SARWC:	1,200 afy
(6)	Norco	1,000 afy
	<i>Total:</i>	<i>24,600 afy</i>

- (c) Surplus Water. CDA shall make any water available from the Facilities in excess of the amounts described in Section 5.1(b) above or otherwise subject to a contract to sell by the CDA, as provided in the Term Sheet.

## 5.2 Abatement:

- (a) Reduction as a Result of Equipment Failure or Force Majeure. Except as provided in Section 5.2(c) hereof, if there is insufficient water available from the CDA Facilities to satisfy all contractual entitlements of the Members, then the amount of water delivered will be abated in an amount proportional to the amount that Member contracts-for from the CDA relative to the amount then contracted-for by the other Members.
- (b) Reduction as a Result of Request by State of California. In the event the State of California elects to request the firm delivery of desalted water from the CDA in an amount no greater than 100 acre-feet per year in accordance with the provisions of Section 8(b)(i) of the Term Sheet, but cannot receive its full requested delivery amount, each Member shall abate its delivery in proportion to the amount of desalted water that Member contracts-for from the CDA relative to the amount then contracted-for by the other Members, if necessary.



- (c) SARWC Request. If the SARWC cannot receive its full allocation of 1,200 acre-feet of water as provided in the Term Sheet, then JCSD and Ontario shall abate their respective deliveries of desalted water on a pro-rata basis to ensure that SARWC can receive its full allocation from CDA. However, JCSD and Ontario shall only have this obligation if SARWC's demand is constant or at a "steady-rate" of 744 gpm.

- 5.3 Quality: The quality of desalted water at the point of delivery for each purchaser under the Term Sheet shall meet the minimum standards of not more than 25 ppm for nitrates and not more than 350 ppm for total dissolved solids, unless an individual purchaser waives such requirements at its point of delivery.

## VI.

### ACCOUNTING

- 6.1 Accounting Procedures. Full books and accounts shall be maintained for the CDA in accordance with practices established by, or consistent with, those utilized by the Controller of the State of California for like public entities. In particular, the Treasurer shall comply strictly with requirements for the statute governing joint powers agencies, Chapter 5, Division 7, Title 1 of the Government Code.
- 6.2 Audit. On an annual fiscal year basis, the Board shall contract with an independent certified public accountant to perform a financial audit of the accounts and records of the CDA. Copies of such audit reports shall be filed with the State Controller and each Member within six months of the end of the audited fiscal year.

## VII.

### FACILITIES

- 7.1 Description of Facilities. The Facilities are those generally described as ICADS Project Alternative 10A, depicted in Exhibit "A-2" to the Term Sheet, with the exception of the Arlington Desalter, and also including proper substitutions, modifications and additions. The Facilities may also include those facilities described in Appendix I to this Agreement. The Parties to this Agreement shall exercise good faith and mutual best efforts to promptly and efficiently agree upon changes or substitutions to the Facilities that do not compromise the purposes of the CDA by (a) reducing production quantities below those set forth in Section 5.1 herein or (b) unreasonably increasing the price of the desalted water, unless no Member objects to the price and (c) the Members of CDA assume the full legal and financial responsibility associated with any changes or substitutions.

- 7.2 **Ownership of Facilities.** All Facilities constructed or acquired by the CDA shall be held in the name of the CDA for the benefit of its Members in accordance with the terms of this Agreement and the Term Sheet.
- 7.3 **Acquisition, Construction and Improvement of Facilities.** Consistent with Section 7.1 hereof, the Facilities may be acquired, constructed, changed, substituted and improved by the CDA by a majority vote of the Board for the common benefit of the Members. CDA may also acquire, construct or improve Facilities ("improvements") for the benefit of less than all Members, so long as it allocates the cost of such improvements on the basis of benefits received.
- 7.4 **Divestment of Facilities.** The CDA may sell or otherwise dispose of Facilities by a two-thirds (2/3) approval vote of the Board. However, divestment may only occur if the CDA receives Fair Market Value for the Facilities. Also, no sale, lease, encumbrance or other divestment of a CDA Facility shall occur if it will cause financial harm to a Member or if the divestment adversely impacts the ability of CDA to meet the quantity and quality commitments set forth in Section 5.3, and any adversely affected Member objects to the divestment. The Board shall determine how to utilize the proceeds of the divestment according to the provisions of this Agreement. However, any disbursement of proceeds from the divestment of Facilities shall be made to Members on a pro-rata basis according to their then relative quantity commitments to purchase water from the CDA.
- 7.5 **Right of First Refusal of Members.** Each Member shall possess a right of first refusal to acquire Facilities that are to be divested by the CDA. In the event that two or more Members of the CDA wish to exercise the right of first refusal with regard to any portion of the Facilities, the entity in whose service area the Facility is located shall have a priority right to exercise that right. If the Facility is not located in the service area of any of the entities who wish to exercise the right, then the Board will determine which Member shall be entitled to acquire the Facility, and the terms and conditions of such acquisition, by majority vote.

## VIII.

### LIABILITY

- 8.1 **Liabilities.** The debts, liabilities and obligations of the CDA shall be the debts, liabilities or obligations of the CDA alone and not of the Members, including ex officio Members. However, a Member separately may contract for, or otherwise assume responsibility for specific debts, liabilities, or obligations of the CDA, and no other Member then shall be liable therefore.



## IX.

### ADDITION AND WITHDRAWAL OF MEMBERS

- 9.1 **Voluntary Withdrawal.** Except as provided in Section 2.2 hereof with regard to SARWC, any Member may withdraw from the CDA at any time upon giving each of the other Members written notice 180 days prior to the end of the fiscal year; provided, however, any withdrawing Member shall be obligated for all liabilities and expenses of the CDA and its interim pre-formation representative, JCSD, incurred prior to withdrawal, including any commitments to purchase water from the CDA and any other diminution of revenue caused by such withdrawal, unless those obligations are assigned and assumed.
- 9.2 **Assignment.** A Member may assign its rights under this Agreement subject to the following conditions.
- a. **Assignments to Members.** A Member may assign its right to another Member upon approval by majority vote of the Board, which approval shall not be unreasonably withheld.
  - b. **Assignments to Non-Members.** A Member may assign its rights and obligations under this Agreement to entities other than a Member upon prior approval by majority vote of the Board, which approval shall not be unreasonably withheld. However, the CDA and each individual Member shall have a right of first refusal to assume the assigning Member's rights and obligations under the same terms and conditions negotiated by the assigning Member.
    - (i) As between CDA and any Member, CDA shall have first priority right to exercise the right of first refusal. If the CDA declines to exercise this right, then any individual Member may exercise this right.
    - (ii) In the event that two or more Members wish to exercise this right of first refusal then the Board will determine which Member shall be entitled to exercise this right by a majority vote of the Board.
    - (iii) The Member proposing the assignment shall not be permitted to vote on the question of the approval of the assignment, but may vote on the question of who shall be entitled to exercise the right of first refusal.
    - (iv) The voting rights of the assignee under this Agreement shall be determined in the sole discretion of CDA as provided in Section 9.4.

- 9.3 **Condemnation or Purchase – Voting.** Where the withdrawal of a Member is the result of condemnation or purchase of that Member by another Member of the CDA, the Board representation of the withdrawing Member shall be eliminated and the other Member shall still have only one representative on the Board, but that representative then shall have the weighted voting rights of the withdrawing Member, and shall assume all financial commitments of the withdrawing Member including any commitments to purchase water from the CDA.
- 9.4 **Admission of New Members.** Additional entities may become Members of the CDA upon such terms and conditions as may be provided by the Board with the consent of two-thirds (2/3rds) vote of the Board, and evidenced by the execution of a written Amendment to this Agreement by all Members, including the additional Member. The addition of new Members shall not affect any other rights of existing Members without the consent of all affected Members.

## X.

### DISSOLUTION

- 10.1 **Term.** The CDA shall continue in existence until dissolved in accordance with the terms of this Article X.
- 10.2 **Dissolution.** The CDA shall not be dissolved until all debts and liabilities of the CDA have been eliminated.
- 10.3 **Dissolution Vote.** Subject to Section 10.2 above and the rights and obligations set forth in the Term Sheet, the CDA may be dissolved by a two-thirds (2/3) affirmative vote of the Board, or by the failure of a condition subsequent.
- 10.4 **Disposition of Property Upon Dissolution.** Upon dissolution of the CDA, any surplus funds on hand shall be returned to the then Members in proportion to the contributions made which proportion shall be defined as the then existing relative quantity commitments to purchase water from the CDA, plus the return of any property contributed by a Member to the CDA for use as part of the Facilities without payment by the CDA to that Member for such use. Upon an affirmative vote to dissolve in accordance with Section 10.3 above, the Board shall offer any Facilities, rights and interests of the CDA for sale to the Members at not less than Fair Market Value. In the event that two or more Members of the CDA wish to purchase any portion of the Facilities, the entity in whose service area the Facility is located shall have a priority right to purchase the Facilities. If the Facility is not located in the service area of any of the entities who wish to purchase it, then the Board will determine who shall be entitled to acquire the Facility by majority vote. If no such sale is consummated within a reasonable period of time, the Board shall then offer such Facilities, rights and interests for sale to any other third party for good and adequate consideration which shall not be less than



Fair Market Value. The net proceeds from any sale shall be distributed among the then Members in proportion to the contributions made which proportion shall be defined as the then existing relative quantity commitments to purchase water from the CDA. The Members shall arrange for the salvage of any remaining Facilities.

## XI.

### MISCELLANEOUS

- 11.1 **Amendments.** This Agreement may be amended upon written approval of any Amendment by all Members. The approval by a Member of an Amendment to this Agreement shall not be effective until a certified copy of the resolution of the governing body of such Member is filed with the Secretary of the CDA, together with a fully executed original of such amendment.
- 11.2 **Notice.** Any notice required to be given or delivered hereunder shall be delivered via the United States Postal Service.
- 11.3 **Choice of Law.** This Agreement shall be governed by the laws of the State of California.
- 11.4 **Severability.** If one or more clauses, sentences, paragraphs or provisions of this Agreement shall be held to be unlawful, invalid or unenforceable, it is hereby agreed by the Members that the remainder of the Agreement shall not be affected thereby.
- 11.5 **Initial Notice.** Within thirty (30) days of the effective date of this Agreement, the CDA shall cause a notice of the Agreement to be prepared in the manner set forth in Section 6503.5 of the Government Code and filed with the Office of the Secretary of State.
- 11.6 **Additional Notices.** Within thirty (30) days of the effective date of any amendment to this Agreement the CDA shall prepare and file with the Office of the Secretary of State the notice required by Section 6503.5 of the Government Code.

## XII

### EXPRESS CONDITIONS SUBSEQUENT

- 12.1 **Mutual Agreements.** This Agreement is subject to satisfaction of the following two express conditions subsequent within ninety (90) days after execution of this Agreement:

- (a) Transportation Agreements. The CDA shall execute an agreement with each of its Members that set forth the terms and conditions for transportation of water from the CDA to each of the Members which is acceptable to all Members. Any such agreement shall require the return of any property contributed by a Member to the CDA for use as part of the Facilities without payment by the CDA to that Member for such use.
- (b) Operations and Management Agreements. The CDA shall execute an agreement with IEUA for the operation and management of the Chino I Desalter and the Chino I Expansion, and with JCSD for the operation and management of the Chino II Desalter which is acceptable to all Members.

12.2 Failure of Condition Subsequent. CDA shall dissolve forthwith in accordance with the provisions of Article X above, unless the conditions subsequent set forth in Section 12.1 above are satisfied within 90 days of the execution of this Agreement, or unless the conditions subsequent are waived by all Parties.



## APPENDIX I

## LIST OF INITIAL EXISTING CHINO I FACILITIES

**Wells**

Well 1	15000 Euclid Avenue	75 HP	600 GPM
Well 2	15200 Euclid Avenue	40 HP	300 GPM
Well 3	15300 Euclid Avenue	75 HP	600 GPM
Well 4	7600 Kimball Avenue	40 HP	600 GPM
Well 5	8500 Kimball Avenue	125 HP	1,200 GPM
Well 6	8600 Kimball Avenue	125 HP	1,200 GPM
Well 7	8650 Kimball Avenue	125 HP	1,200 GPM
Well 8	15250 Walker Avenue	100 HP	900 GPM
Well 9	8700 Remington Street	100 HP	1,200 GPM
Well 10	8800 Remington Street	100 HP	1,200 GPM
Well 11	9300 Remington Street	125 HP	1,200 GPM

**Treatment Facility**

9.3 MGD (9,200 AFY) treatment facility Located 6905 Kimball Avenue. Treatment process includes pretreatment, filtration, RO, disinfection and blending.

**Offsite Facilities****Jurupa/Norco's Product Waterline**

Approximately 62,000 LF of waterline traversing from the Chino I facility to Jurupa's point of connection on 56<sup>th</sup> Street.

(of this 62,000 LF, 14,000 LF of 30" is located in San Bernardino County and 48,000 LF of 24" and 30" is in Riverside County) (Jurupa paid to upsize the pipeline from 24" to 30" from the County line to Wineville Avenue and therefore owns the capacity difference between the 24" and 30" on this section)

**Jurupa's Reservoir**

5 MG steel reservoir constructed on Jurupa's property located at Indian Palms Drive and Star View Drive.

**City of Chino's Product Waterline**


Approximately 23,500 LF of 16" waterline traversing from the Chino 1 treatment facility to reservoir site on Schaefer Avenue.

**City of Chino's Reservoir**

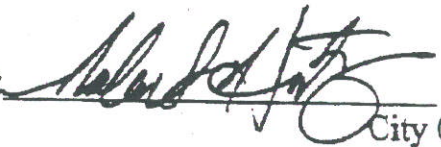
3 MG steel reservoir constructed on the City of Chino's property located on Schaefer Avenue

CITY OF ONTARIO

DATED: 8/21/01

By:   
City Manager

DATED: 8/21/01

Attested:   
City Clerk

  
Approved as to Form



DATED: 8/6/01

By: Carl Zinner President

DATED: 8/6/01

Attested: *[Signature]* Secretary

SB 269918 v1: 008350.0001

CITY OF CHINO

DATED: 9-4-2001

By: [Signature]  
Mayor Pro Tem

DATED: 9-4-01

Attested: [Signature]  
City Clerk

[Signature]  
Approved as to Form



CITY OF CHINO HILLS

DATED: 10-23-01

By: Ed Galan  
Mayor

DATED: 10-24-01

Attested: Mary M. McDuffee  
City Clerk

[Signature]  
Approved as to Form

CITY OF NORCO

DATED: 8/7/01

By: Hal H Clark  
Mayor

DATED: 8/8/01

Attested: Jan L. H. May  
City Clerk

John H. [Signature]  
Approved as to Form



SANTA ANA RIVER WATER COMPANY

DATED: August 15, 2001

By: Viki R. Rupe  
Viki R. Rupe President

DATED: August 15, 2001

Attested: J. Arnold Rodriguez  
J. Arnold Rodriguez Secretary

Michele A. Staples  
Approved as to Form

Michele A. Staples Esq.

# INLAND EMPIRE UTILITIES AGENCY

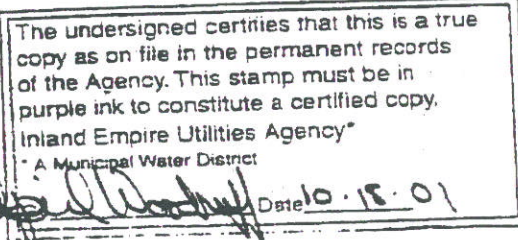
DATED: August 15, 2001

By: John L. Anderson  
President

DATED: August 15, 2001

Attested: Anne Sanchez  
Secretary

Approved as to Form





STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF SAN BERNARDINO )

I, CAROLE A. MC GREEVY, Secretary of the Board of Directors of the Chino Basin Desalter Authority, do hereby certify that the above and foregoing is a full, true and correct copy of the Joint Exercise of Powers Agreement creating the Chino Basin Desalter Authority dated September 25, 2001.

DATED: February 21, 2002

(SEAL)

  
\_\_\_\_\_  
Secretary of the Board of Directors

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN BERNARDINO )

I, CAROLE A. MC GREEVY, Secretary of the Board of Directors of the Chino Basin Desalter Authority, do hereby certify that the above and foregoing is a full, true and correct copy of Amendment No. 1 to the Joint Exercise of Powers Agreement Creating The Chino Basin Desalter Authority dated December 25, 2001.

DATED: February 21, 2002

(SEAL)

Barth J. Gentry  
Secretary of the Board of Directors



AMENDMENT NO. 1  
TO THE JOINT EXERCISE OF POWERS AGREEMENT  
CREATING THE CHINO BASIN DESALTER AUTHORITY

This Amendment No. 1 ("Amendment") to the Joint Exercise of Powers Agreement creating the Chino Basin Desalter Authority is made and entered into as of December 25<sup>th</sup>, 2001, by and among the Jurupa Community Services District ("JCSD"), the Santa Ana River Water Company ("SARWC"), the cities of Chino, Chino Hills, Norco and Ontario and the Inland Empire Utilities Agency ("IEUA") (collectively the "Parties" and individually, a "Party").

RECITALS

A. The Parties have previously entered into the Joint Exercise of Powers Agreement creating the Chino Basin Desalter Authority (the "Agreement").

B. The parties desire to amend the Agreement to increase the time during which certain conditions subsequent can be fulfilled.

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Incorporation By Reference. This amendment hereby incorporates by reference all terms and conditions set forth in the Agreement, unless specifically modified by this Amendment. All terms and conditions set forth in the Agreement which are not specifically modified by this Amendment shall remain in full force and effect.

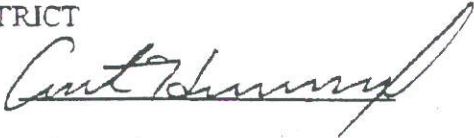
2. Terms of Amendment.

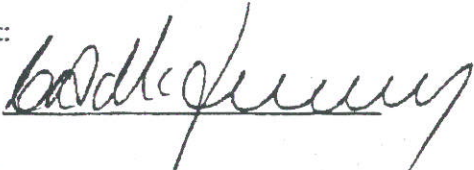
A. Section 12.2 of the Agreement is hereby amended to read as follows:

"CDA shall dissolve forthwith in accordance with the provisions of Article X above, unless the conditions subsequent set forth in Section 12.1 above are satisfied within 180 days of the execution of this Agreement, or unless the conditions subsequent are waived by all Parties."

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

JURUPA COMMUNITY SERVICES  
DISTRICT

By:   
Title: President  
Date: 12/18/01

Attest:  
By:   
Title:  
Date:

Approved as to form

By: \_\_\_\_\_  
Title:  
Date:

CITY OF CHINO

By: \_\_\_\_\_  
Title:  
Date:

Attest:  
By: \_\_\_\_\_  
Title:  
Date:

Approved as to form

By: \_\_\_\_\_  
Title:  
Date:

SANTA ANA RIVER WATER COMPANY

By: \_\_\_\_\_  
Title:  
Date:

Attest:  
By: \_\_\_\_\_  
Title:  
Date:

Approved as to form

By: \_\_\_\_\_  
Title:  
Date:

CITY OF CHINO HILLS

By: \_\_\_\_\_  
Title:  
Date:

Attest:  
By: \_\_\_\_\_  
Title:  
Date:

Approved as to form

By: \_\_\_\_\_  
Title:  
Date:



IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

JURUPA COMMUNITY SERVICES  
DISTRICT

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF CHINO

By: Burke M. Allen

Title: Mayor  
Date: 12-18-01

Attest:

By: Debra G. Warren

Title: City Clerk  
Date: 12-18-01

Approved as to form

By: [Signature]

Title: \_\_\_\_\_  
Date: City Attorney  
12-18-01

SANTA ANA RIVER WATER COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

CITY OF CHINO HILLS

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_  
Date: \_\_\_\_\_

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

JURUPA COMMUNITY SERVICES  
DISTRICT

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF CHINO

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SANTA ANA RIVER WATER COMPANY

By: Vicki R. Rupe

Vicki R. Rupe

Title: President

Date: December 12, 2001

Attest: \_\_\_\_\_

By: J. Arnold Rodriguez

J. Arnold Rodriguez

Title: Secretary

Date: December 12, 2001

Approved as to form

By: Michelle A. Staples

Title: Special Legal Counsel

Date: 12/12/2001

CITY OF CHINO HILLS

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

JURUPA COMMUNITY SERVICES  
DISTRICT

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF CHINO

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SANTA ANA RIVER WATER COMPANY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF CHINO HILLS

By: \_\_\_\_\_

Title: Mayor

Date: Dec. 11, 2001

Attest: \_\_\_\_\_

By: Mary M. McDuffee

Title: Asst. City Clerk

Date: Dec. 11, 2001

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: 12/11/01



CITY OF NORCO

By: \_\_\_\_\_

Title: Mayor

Date: January 2, 2002

Attest:

By: \_\_\_\_\_

Title: Acting City Clerk

Date: January 2, 2002

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

INLAND EMPIRE UTILITIES AGENCY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF ONTARIO

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF NORCO

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

INLAND EMPIRE UTILITIES AGENCY

By: *Richard A. Swartz*

Title: GENERAL MANAGER

Date: 12/6/01

Attest: \_\_\_\_\_

By: *Ann Dunithan*

Title: \_\_\_\_\_

Date: 12/10/01

Approved as to form

By: *Paul H. Haggan*

Title: \_\_\_\_\_

Date: *General Counsel*

CITY OF ONTARIO

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF NORCO

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

INLAND EMPIRE UTILITIES AGENCY

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CITY OF ONTARIO

By: 

Title: City Manager

Date: 12/04/01

Attest:

By: 

Title: Assistant City Clerk

Date: 12/04/01

Approved as to form

By: 

Title: City Attorney

Date: 12/04/01